

1990

02



Mr. Andrew H. Perellis
Coffield, Ungaretti, Harris & Slavin
3500 Three First National Plaza
Chicago, IL 60602

RE: Phase II Work Plan Addendum at the American Chemical Service
NPL Site

Dear Mr. Perellis:

This letter is in response to your January 25, 1990 letter regarding EPA's qualified approval of the Phase II Work Plan Addendum at the American Chemical Service Site in Griffith, Indiana. While some differences of interpretation of the Work Plan and Consent Order exist, these differences should not interfere with timely performance of the remedial investigation.

The primary area of concern in your comments appears to be that the remedial investigation will turn into an open-ended investigation of the site and the surrounding area. We understand the PRPs to interpret the Work Plan to provide specific limits as to the work performed. EPA's concern is that the remedial investigation provide sufficient information to conduct an adequate feasibility study for the site. The Work Plan and the Addendum are designed to allow the necessary flexibility to ensure that the remedial investigation provides the proper scientific data to conduct the feasibility study. Since the Work Plan is obviously written before the results of the data generated from the Plan can be analyzed, flexibility is required. The flexibility is reflected in the language of the Plan which qualifies the stated number of environmental samples in the Plan as the "anticipated" number. The Plan also allows for a Phase III of the investigation. EPA, through its modifications of the Supplemental Work Plan, hopes to avoid the need for conducting a Phase III by including necessary tasks during Phase II. EPA's modifications are intended to eliminate the duplication of tasks and additional expenses which would be incurred by the PRPs if a Phase III of the investigation was necessary.

EPA shares the PRPs concern over an open-ended investigation. The flexibility EPA interprets in the Work Plan does not necessarily require an expanded investigation by the PRPs. EPA demonstrated its concern during Phase I of the investigation by agreeing to reduce the number of [sampling wells] initially required. This agreement resulted in an estimated savings to the PRP group of approximately \$20,000. *Soil samples*

While there appear to remain conceptual differences in our interpretation of the Work Plan and the Addendum, these

differences should not interfere with the timely completion of the remedial investigation and certainly do not constitute grounds for a Force Majeure as defined in Section XVIII of the Consent Order. The Phase II Supplemental Work Plan contains a schedule for implementation which has not been followed. The PRPs should proceed to conduct all work which the EPA and the PRPs agree is necessary for a complete remedial investigation and reserve all potential conflicts for the time, if ever, that they occur. In the remainder of this correspondence, we provide a point by point discussion of our position after consideration of your January 25, 1990 response.

1. Groundwater and Surface Water Flow Direction
(Paragraph 2)

EPA agrees with your position that technical issues will, hopefully, be resolved in the field. As stated in your response, we share the common interest in good science leading to a sound RI/FS. Discussion of the differences we have under this paragraph is premature, since our conceptual differences may have no bearing on the actual performance of the RI.

2. (Paragraph 4, Page 3)

EPA approval of the model required in the Addendum is no different than the approval required in the Work Plan (Paragraph 4.4.3). Again, discussion of our conceptual differences is premature. We share your belief that EPA's RPM and your Project Manager will reach a consensus on the appropriate model.

3. Contaminant Plume Delineation

The Agency anticipates that at least five (5) aquitard matrix samples of the clay layer from areas underlying the most contaminated areas of the upper aquifer plume will be necessary. Data from the sampling of the confining layer may have a significant impact in evaluating remedial action alternatives at the site. The data will provide information on the extent of the risk of lower aquifer contamination as a result of leakage from the upper aquifer.

However, in consideration of the concerns voiced in your January 25 response, drilling need not take place until wells are first installed in both the upper and lower aquifers. The installation of these wells will alleviate concerns associated with penetrating the clay layer without further confirming the thickness of the layer.

The Agency is also willing to postpone discussion of the need for clay samples until after it receives the data from the sampling of the upper and lower aquifer wells, provided that the Agency is provided the fully validated sampling results within two weeks of the sampling and that sampling of the lower aquifer wells takes place within a reasonable time frame following the

installation/development of each well (i.e., install, develop, and sample each well within ten (10) calendar days). Any further delay will add considerable expense to the sampling process. If the data from the samples shows that the lower aquifer is already contaminated from leakage from the upper aquifer, EPA does not anticipate a need to sample the clay layer.

4. Contaminate Plume Delineation (Paragraphs 1 & 4)

As per our comments above, further discussion of this issue is premature at this time. EPA is hopeful this issue will be resolved by consensus in the field.

5. Contaminant Plume Delineation (Groundwater Sampling Paragraph 2)

Full parameter testing is a necessary and essential part of the remedial investigation. For reasons stated in our letter of October 25, 1989, EPA considers the sampling consistent with the approved Work Plan.

The issue of oversight costs, raised in both your letters of January 25, 1990, and November 22, 1989, is a separate issue from the previous technical discussions. EPA considers its oversight costs an integral part of the Consent Order. Paragraph XXVI of the Consent Order expressly requires payment of oversight costs. Paragraph XXVI, as you are aware, also states that payment will be made within 90 calendar days of receipt of the EPA accounting. The required accounting documents were sent to your office on October 5, 1989. Enclosed, in addition to the accounting required by the Consent Order and provided in the letter of October 5, 1989, are several documents we hope will clarify your concerns over EPA's billing practices. The enclosures include a "stand alone" document explaining the allocation methodology used to develop the indirect cost rates, indirect cost updates, a Superfund indirect cost manual, and a summary of the tasks performed by various EPA employees related to the ACS Site. Also enclosed, for your information, is a recent decision of the Sixth Circuit Court of Appeals. The case provides a discussion of the applicability of direct and indirect costs at a CERCLA site.

6. Delineation of Surface Water Sediment Contamination

EPA does not share the interpretation that its modification of the work plan addendum requires the exhaustion of a specific number of predetermined soil samples. We are now advising you, as you request in your response, to instruct Warzyn to provide for the procurement of the additional sediment samples, as described in our letter of January 8, 1990.

7. Wetlands Delineation

We also look forward to seeing you at the meeting later this month.

8. Figure 1

We are in agreement.

9. OAPP Addendum, Table 1

See Comment 5, above.

In Conclusion, EPA shares the Respondents interest in completing a scientifically sound remedial investigation. EPA also shares the Respondents interest in avoiding the penalty provisions of paragraph XIX of the Consent Order by completing the remedial investigation within the timeframes set forth in the Work Plan. While EPA recognizes the conceptual differences in interpreting the Consent Order, these differences should not delay the remedial investigation. We are hopeful that this letter satisfies your concerns and the remedial investigation will proceed in a timely fashion.

If you have any questions concerning this letter or the enclosures, please contact me at (312) 353-1129.

Sincerely,

Steven Siegel
Assistant Regional Counsel

Enclosures

cc: Robert Swale

bcc: Rodger Field
Kerry Street

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Phase II
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for
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various
environmental
samples

EPA shares the PRPs concern over an open-ended investigation, and would like the remedial investigation to be completed as expeditiously as possible. The flexibility EPA interprets in the Work Plan does not necessarily require an expanded investigation by the PRPs. EPA demonstrated its concern during phase I of the investigation by agreeing to reduce the number of sampling wells initially required. This agreement resulted in savings to the PRP group of approximately \$30,000.

but also
soil
samples
estimated

(10 samples total)

While there appear to remain conceptual differences in our interpretation of the Work Plan and the Addendum, these differences should not interfere with the timely completion of the remedial investigation. In the remainder of this correspondence, we provide a point by point discussion of our position after consideration of your January 25, 1990 response.

1. Groundwater and Surface Water Flow Direction
(Paragraph 2)

EPA agrees with your position that technical issues will, hopefully, be resolved in the field. As stated in your response, we share the common interest in good science leading to a sound RI/FS. Discussion of the differences we have under this paragraph is premature, since our conceptual differences may have no bearing on the actual performance of the RI.

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fully validated

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4. Contaminate Plume Delineation (Paragraphs 1 & 4)

As per our comments above, further discussion of this issue is premature at this time. EPA is hopeful this issue will be resolved by consensus in the field.

and that sampling of the lower aquifer wells takes place within a reasonable time frame following the installation/development of each well. i.e., install well - develop well - sample well all in 10 days calendar

5. Contaminant Plume Delineation (Groundwater Sampling Paragraph 2)

Full parameter testing is a necessary and essential part of the remedial investigation. For reasons stated in our letter of October 25, 1989, EPA considers the sampling consistent with the approved Work Plan. ^{Q²?}

The issue of oversight costs, raised in both your letters of January 25, 1990, and November 22, 1989, is a separate issue from the previous technical discussions. EPA considers its oversight costs an integral part of the Consent Order. Paragraph XXVI of the Consent Order expressly requires payment of oversight costs. Paragraph XXVI, as you are aware, also states that payment will be made within 90 calendar days of receipt of the EPA accounting. The required accounting documents were sent to your office on October 5, 1989. Enclosed, in addition to the accounting required by the Consent Order and provided in the letter of October 5, 1989, are several documents we hope will clarify your concerns over EPA's billing practices. The enclosures include a "stand alone" document explaining the allocation methodology used to develop the indirect cost rates, indirect cost updates, a Superfund indirect cost manual, and a summary of the tasks performed by various EPA employees related to the ACS Site. Also enclosed, for your information, is a recent decision of the Sixth Circuit Court of Appeals. The case provides a discussion of the applicability of direct and indirect costs at a CERCLA site.

6. Delineation of Surface Water Sediment Contamination

EPA does not share the interpretation that its modification of the work plan addendum requires the exhaustion of a specific number of predetermined soil samples. However, for reasons already discussed, our conceptual differences on this issue may have no practical effect on the remedial investigation. Further discussion of this issue should be postponed until the time, if ever, that this issue becomes relevant. We are now advising you, as you request in your response, to instruct Warzyn to provide for the procurement of the sediment samples, as described in our letter of January 8, 1990. ^{we may want to exclude this.}

^{additional}

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We also look forward to seeing you at the meeting later this month.

8. Figure 1

We are in agreement.

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